

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE

  
Alistair E. Newbern  
U.S. Magistrate Judge

CYNTHIA GEORGE.

*Plaintiff*

v.

KIRKWOOD PLACE, LLC, RFM  
DEVELOPMENT COMPANY, W.R.  
NEWMAN & ASSOCIATES, INC., AND  
HZ KIRKWOOD DST

*Defendants.*

)  
)  
) Case No. 3:23-cv-01218  
)

) Chief Judge Waverly D. Crenshaw, Jr.  
) Magistrate Judge Alistair Newbern  
)

) JURY DEMAND  
)  
)  
)  
)

**JOINT MOTION TO AMEND CASE MANAGEMENT ORDER**  
**AND MEMORANDUM IN SUPPORT THEREOF**

Plaintiff Cynthia George (“Plaintiff”) and Defendants Kirkwood Place, LLC; RFM Development Company; W.R. Newman & Associates, Inc.; and HZ Kirkwood DST (“Defendants”), by and through the undersigned counsel, jointly move the Court to amend the Initial Case Management Order in the above-captioned matter.

1. On January 31, 2024, the Court entered an Initial Case Management Order (“CMO”) in this matter (Doc. No. 24).

2. The parties have been diligent in meeting the requirements and deadlines in the original Scheduling Order, but seek more time to serve additional written discovery requests, to move the Court to amend or add parties, and to make a first attempt at resolution.

3. Defendants recently received Plaintiff’s expert designation and report on May 10, 2024.

4. Based on that document, Defendant Kirkwood Place, LLC (“Kirkwood”) intends to seek leave of court to file a third-party complaint in this matter against the architect responsible for designing the apartment complex that is the subject of this action.

5. Plaintiff and the other defendants have indicated they will not oppose the motion to add the architect, which Kirkwood expects to file in the next week or two, pending some preliminary opinions from its expert.

6. Further, other parties are considering whether to also seek leave of Court to add parties to this lawsuit, and possibly cross-claims, and request more time to make those determinations. Plaintiff reserves the right to object to adding additional parties if it is not done promptly and will unduly delay resolution of the case. It is Plaintiff’s position that Defendants should have sufficient information at this point to identify and add any parties that have material responsibility for the design or construction of the Property. It is Defendants’ position that they need time for their own experts to review and at least provide preliminary opinions regarding the violations alleged in Plaintiff’s expert report.

7. The parties would like to have time for these parties to be added to the lawsuit so they can comply with their obligations to serve written discovery requests and engage in a more meaningful first attempt at resolving this matter.

8. The parties request to modify the following dates in the CMO as follows:

<b>Event</b>	<b>Current Date</b>	<b>Requested Date</b>
Service of written discovery requests	May 24, 2024	June 14, 2024
Motions to amend or add parties	May 24, 2024	July 15, 2024
First attempt at resolution	May 31, 2024	July 30, 2024

9. As set forth below, all other dates in the CMO would remain the same, including the deadlines to file discovery motions and dispositive motions, and the trial date, and will still conform to the requirements of Local Rule 16.01(h)(1):

<b>Event</b>	<b>Date</b>
Plaintiff's disclosure of experts	May 24, 2024
Defendants' disclosure of experts	July 25, 2024
Completion of expert depositions	August 30, 2024
Completion of written discovery and fact depositions	October 25, 2024
Dispositive motions	November 22, 2024
Trial	June 17, 2025

10. Under Fed. R. Civ. P. 16(b)(4), a scheduling order may be modified for good cause and with the judge's consent.

11. "When evaluating whether to amend the scheduling order, the court should consider the totality of the circumstances, along with the requesting party's diligence in meeting the requirements of the original order and any resulting prejudice to the side opposing the amendment of the order." *Campos v. MTD Prod., Inc.*, No. 2:07-CV-00029, 2009 WL 2252257, at \*12 (M.D. Tenn. July 24, 2009) (citing *Andretti v. Borla Performance Indus., Inc.*, 426 F.3d 824, 830 (6th Cir. 2005)). "The primary measure of Rule 16's 'good cause' standard is the moving party's diligence in attempting to meet the case management order's requirements." *Commerce Benefits Grp., Inc. v. McKesson Corp.*, 326 F. App'x 369, 377 (6th Cir. 2009) (quoting *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625 (6th Cir. 2002)).

12. Considering the parties' diligence in complying with the current CMO, the potential wastefulness of serving written discovery and making an attempt at resolution without all necessary parties, the parties submit that good cause exists to amend the current CMO.

13. For the foregoing reasons, the parties jointly move the Court to amend the current CMO as set forth herein.

Dated: May 23, 2024

Respectfully submitted,

s/ Eric G. Calhoun

Eric G. Calhoun  
Texas Bar No. 03638800  
1595 N. Central Expressway  
Richardson, Texas 75080  
Telephone: (214) 766-8100  
Facsimile: (214) 308-1947  
[eric@ecalhounlaw.com](mailto:eric@ecalhounlaw.com)  
[egcla@ecalhounlaw.com](mailto:egcla@ecalhounlaw.com) (Assistant)

M. Todd Sandahl (TN BPR # 019167)  
Attorney at Law  
234 First Avenue South  
Franklin, Tennessee 37064  
Telephone: (615) 794-3450  
[tsandahl@mtslaw.com](mailto:tsandahl@mtslaw.com)

*Attorneys for Plaintiff Cynthia George*

s/ Brian M. Dobbs

Brian M. Dobbs (TN BPR # 25855)  
Bass, Berry & Sims PLC  
150 3rd Ave. S., Suite 2800  
Nashville, TN 37201  
Telephone: (615) 742-6200  
[bdobbs@bassberry.com](mailto:bdobbs@bassberry.com)

*Attorney for Defendants Kirkwood Place,  
LLC and RFM Development Company*

s/ Thomas B. Hall

Thomas B. Hall (TN BPR # 36816)  
Sherrard Roe Voigt & Harbison, PLC  
150 Third Avenue South, Suite 1100  
Nashville, Tennessee 37201  
(615) 742-4200  
[thall@srvhlaw.com](mailto:thall@srvhlaw.com)

*Attorney for Defendant W.R. Newman &  
Associates, Inc.*

s/ Erin Palmer Polly

Erin Palmer Polly (TN BPR # 22221)  
K&L Gates LLP  
501 Commerce Street, Suite 1500  
Nashville, Tennessee 37203  
Telephone: (615) 780-6700  
Facsimile: (615) 780-6799  
[erin.polly@klgates.com](mailto:erin.polly@klgates.com)

Craig Leen (Admitted *Pro Hac Vice*)  
K&L Gates LLP  
1601 K Street, NW  
Washington, DC 20006  
Telephone: (202) 778-9000  
[craig.leen@klgates.com](mailto:craig.leen@klgates.com)

*Attorneys for Defendant HZ Kirkwood DST*

## **CERTIFICATE OF SERVICE**

I certify that on May 23, 2024, a copy of the foregoing was electronically filed via CM/ECF, which will provide electronic service to the following:

Eric G. Calhoun  
1595 N. Central Expressway  
Richardson, Texas 75080  
[eric@ecalhounlaw.com](mailto:eric@ecalhounlaw.com)  
[egcla@ecalhounlaw.com](mailto:egcla@ecalhounlaw.com) (Assistant)

and

M. Todd Sandahl  
234 First Avenue South  
Franklin, Tennessee 37064  
[tsandahl@mtslaw.com](mailto:tsandahl@mtslaw.com)

*Attorneys for Plaintiff*

Thomas B. Hall  
Sherrard Roe Voigt & Harbison, PLC  
150 Third Avenue South, Suite 1100  
Nashville, Tennessee 37201  
[thall@srvhlaw.com](mailto:thall@srvhlaw.com)

*Attorney for Defendant W.R. Newman & Associates, Inc.*

Erin Palmer Polly  
K&L Gates LLP  
501 Commerce Street, Suite 1500  
Nashville, Tennessee 37203  
[erin.polly@klgates.com](mailto:erin.polly@klgates.com)

Craig Leen  
K&L Gates LLP  
1601 K Street, NW  
Washington, DC 20006  
[craig.leen@klgates.com](mailto:craig.leen@klgates.com)

*Attorneys for Defendant HZ Kirkwood DST*

s/ *Brian M. Dobbs*